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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,852	11/28/2000	Christopher Brian Brodeur	760-19	6459

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EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/723,852

Applicant(s)  
Brodeur

Examiner  
Michael Thaler

Art Unit  
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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Claims 1-16 and 18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1 and 16 include the term "perimetrically non-continuous" when referring to a tubular body. This is interpreted to mean that the tubular body is non-continuous along its perimeter, i.e. the along the circumference of the tubular body, since the perimeter of a tubular body is its circumference. However, the specification, on page 7, lines 19-22, defines the term "perimetrically non-continuous", when referring to a tubular body, as a tubular body which is not substantially uninterrupted along its length. Thus, it is unclear if "perimetrically non-continuous" means non-continuous along the tubular member circumference or non-continuous along the tubular member length. In addition, it appears that second body 7 (figure 2) and second body 10 (figure 3) extend only partially in the circumferential direction since they are termed "strips" in the specification. Yet, the second bodies (e.g. second bodies 7 and 10) are referred to as a tubular bodies throughout the specification. Thus, it is unclear from the disclosure if second bodies 7 and 10 are tubular bodies which extend completely 360 degrees circumferentially or not.

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Claims 1-16 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite for the reasons set forth above. In addition, in claim 8, it is not seen how said strips (plural) defined in lines 1-2, can be "a continuous non-overlapping helical strip" (singular) defined in line 4, or "one" longitudinally oriented strip as defined in lines 4-5. Further, it is not seen how the helical strips defined in line 5 are "segmented" since helical strips 8 in figure 3 are not segmented. For similar reasons, it is not seen what "segmented helical wrap" means since helical wraps 8 and 11 are shown as being continuous rather than segmented. In claim 14, it is not understood what "segments of...strips" means or what in the disclosure this refers to.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (EP 0893108). Ray shows first

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substantially continuous PTFE tubular body 4, second perimetrically non-continuous tubular body (the longitudinally extending strips of the coupling member described in col. 9, lines 13-21) formed of polytetrafluorethylene (as indicated in col. 16, lines 20-31) and support structure 6. Axial and radial compliance is obviously provided to the prosthesis due to the gaps between the strips. As to claim 3, note col. 7, lines 24-26 which indicates that the coupling member may be located on the inner rather than the outer surface of the stent. As to claim 6, note col. 10, lines 42-46.

Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Layne et al. (6,398,803). Layne et al. show first perimetrically non-continuous polytetrafluorethylene inner tubular body (the inner "lacey" graft described in col. 5, lines 29-42), second perimetrically non-continuous outer tubular body (the outer "lacey" graft described in col. 5, lines 29-42), support structure 30, both the outer and inner tubular body being formed of strips 48. Axial and radial compliance is obviously provided to the prosthesis due to the openings between the strips.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
September 19, 2002  
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MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731